

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 1007 of 2001 (M/S)

(Old No. 19162/99)

State of U.P.

Vs.

The Addl. Distt. Judge – III

Dehradun and others.

Approved for reporting.

Not approved reporting

Date of decision 14.08.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL
WRIT PETITION NO. 1007 (MS) OF 2001
(Old No. 19162/99)

State of U.P.,

Through Superintending Engineer,

Irrigation Construction Circle,

Dehradun.

.....Petitioner.

Versus

1. The Additional District Judge-III, Dehradun.
2. The 3rd Addl. Civil Judge (Senior Division), Dehradun.
3. M/s Chahal Engineering Co. Ltd., New Delhi.

.....Respondents.

Dated: 14.08.2006

Hon'ble Rajesh Tandon, J.

Heard Standing Counsel for the State of U.P. and
Standing Counsel for the respondents no. 1 and 2.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the judgment and order dated 05.03.1998, passed by the respondent no. 1 in Civil Appeal No. 3 of 1997 (Annexure No. 1 to the writ petition).

3. Briefly stated, plaintiff/respondent M/s Chanchal Engineering and Construction Company Pvt. Ltd, New Delhi entered into an agreement No. 15/Se/78-80 for the work of construction of twin free flow tunnels of 6.0 M. Diameter Horse show along with inlet and outlet transitions and cross drainage works for Khara Hydel Project in District Dehradun. The estimated value of the work was Rs. 5,30,00,000/- as per

original conditions of the contract the work was required to be completed within 36 months from the date of the signing of the agreement i.e. 24.03.1980, but the same work cannot be completed within the said period due to various acts on the part of the defendant and due to change in the scope of work, non-availability of materials to be supplied by the respondents etc. and various other defaults on the part of the respondent. Ultimately the plaintiff had to invoke the arbitration clause contained in the agreement, which provides for the decision of the dispute. Sri N.K. Mahrotra, Joint Secretary-cum-Joint L.R. was appointed to decide the following dispute, which had arisen between the parties:-

“(1) Change in strata-(Claim for additional expenditure in boring/construction of tunnels on account of encountering strata different from the one that was provided for/envisaged in the contract).

(2) Joining of 2 nos. 20 mm thick plates to make 40 mm thick plates.

(3) diversion of Mundiwala Rao Nullah.”

4. The Arbitrator entered into the reference on 18.09.1989 and after continuing the proceedings for about three years gave his award on 28.11.1992. The plaintiff had tendered his rates for the said work only. Thereafter, the defendant has submitted application under Section 16 of the Arbitration Act and Section 151 C.P.C. with the prayer for reconsideration of the award in respect of Claim NO. 1 as per decision of issues no. 1, 2 and 6 and claim for interest as per decision on issues nos. 8 and 10 for setting aside and for its recommission to the Arbitration for reconsideration. He has further submitted that the Arbitrator has misconducted himself and the proceedings are liable to be set aside.

However, the arbitrator has come to the conclusion to the following effect:-

“4. It is further stated on behalf of the plaintiff that the learned Arbitrator has further stated that:-

- (a) the delay in completion can not be for various reasons other than the difficult strata.*
- (b) Clause 11 of the agreement did not apply to the change in strata.*

5. However, the trial Court after considering the contention of the parties on claim no. 1 on issues no. 8 and 9 has remitted the award to the Arbitrator for reconsideration. Regarding the claim no. 2, the award was confirmed and it was made rule of the Court and the interest to be given to the claimant to the extent of 18% from 19.11.1996.

6. Against the aforesaid judgment, the appeal was preferred before the appellate Court. Both the parties have referred various decisions. Paragraph 10 has been referred by the plaintiff. The appellate Court has considered the claims made by the claimant and award given by the arbitrator and ultimately confirmed the findings.

7. So far as the claim no. 1 is concerned, the same has become final, no appeal has been preferred against remission of the award. So far as the claim no. 2 is concerned, the award was confirmed. The reasons given by the arbitrator on issues no. 3 and 4 relating to the claim no. 2 and reasons given by the arbitrator. Relevant portion of the order is quoted below:-

“16. In this connection, it is relevant to quote the relevant reasons/observations/findings of the learned Arbitrator on those issues, which reads as under:-

“The case of the claimant is that respondents supplied 10- mm. Thick plates at the initial stage but from May 1982 the respondent provided 20 mm thick plates and directed the same day be welded to make 40 mm thick plate. The claimant vide letter dated 22.6.82 (C-37) immediately informed that it involves extra expenditure. The claimant also submitted detailed analysis based on actual expenditure vide letter dated 17.2.1983 (Annexure C-38).

Respondent submitted in reply that claimants used tow 20 mm. Plates to make 40 mm plates because 40 mm plates were not available. It is contended by the respondents that it was obligatory on the part of the claimants to use two 20 mm plates for making 40 mm plates under clause 149 of the agreement and therefore, claimant is not entitled to any compensation. It is also provided in clause 105(D) that contractor will purchase steel from outside only after he has been denied the issue of steel form Government stores in writing and has been allowed to purchase steel from outside in writing. In such event, the difference of cost over or below the issue rates specified above per tonne shall be adjusted by reimbursement to or rebate from the contractor. It is admitted fact that claimant was provided 20 mm plates to make it 40 mm plates as the 40 mm plates were not available and he was not permitted to purchase 40 mm thick plates from the market. If the contractor had been permitted to purchase 40 mm plates from market, respondents would have reimbursed the difference of costs in supply rate by government and market rate. Since in this case contractor was not permitted to purchase 40 mm plates

from market, he was forced to bear extra expenditure of welding two mm plates to make it 40 mm plates to fulfil his obligation under the agreement. This welding of two 20 mm plates to make on 40 mm thick plates is an extra work forming an inseparable part of work which involve extra expenditure.”

17. The aforementioned reasonings / observations / findings of the arbitrator are detailed and reasoned one. In this connection, the learned counsel for the respondent Sri S.M. Jain, Advocate drew the attention of the Court towards the ruling of the Hon'ble Supreme Court of India reported in AIR 1989 Supreme Court at page 973, in which the Hon'ble Supreme Court of India has held a sunder:-

“Reasonableness as such of an award unless the award is per se preposterous or absurd is not a matter for the court to consider. Appraisement of evidence by the arbitrator is ordinarily not a matter for the court. It is difficult to give an exact definition of the word ‘reasonable’. Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and the circumstances in which he thinks. The word ‘reasonable’ has in law prima facie meaning meaning of reasonable in regard to those circumstances of which the actor, called upon the act reasonably known or ought to know.”

19. Learned counsel for the respondent Sri S.M. Jain, Advocate has also relied upon the ruling of the Hon'ble Supreme Court of India reported in (1990) 4 S.C.C. at page 653, wherein the Hon'ble Supreme Court of India has held as under:-

“As regards the award of an arbitrator under the Act, the law is well settled that the arbitrator’s adjudication is generally considered binding between the parties for he is a tribunal selected by the parties and the power of the court to set aside the award is restricted to cases set out in Section 30 of the Act, viz. (a) if the arbitrator has misconducted himself or the proceedings; or 9b) when the award has been made after the issue of an order by the court superseding the arbitration or after arbitration proceedings have become invalid under section 35/ or (c) when the award has been improperly procured or is otherwise invalid. Under clause (c) of Section 30 the Court can set aside an award which suffers from an error on the face of the award. It is, however, not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. But the jurisdiction of the arbitrator is limited by the reference and if the arbitrator has assumed jurisdiction not possessed by him, the award to the extent to which it is beyond the arbitrator’s jurisdiction would be invalid and liable to be set aside. (See: Jivarajbahi Ujamshi Sheth V. Chintamanrao Balaji.) This position at law has been reiterated by the Constitution Bench of this Court in its recent decision in Raipur Development Authority V. M/s. Chokhamal Contractors. It has been held that an arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or the deed of submission he is required to give such reasons.”

21. *Learned counsel for the respondent Sri S.M. Jain, Advocate further drew the attention of the Court towards the law reported at AIR 1987 Supreme Court at page 2045, wherein the Hon'ble Supreme Court of India has held as under:-*

“An award can only be set aside where there is an error on its face. Further, it is an error of law and not mistake of fact committed by the arbitrator, which is justifiable in the application before the Court. It is an error of law and not mistake of fact committed by the arbitrator which is amenable to corrections by the Court.

Where the alleged mistakes or alleged errors, if there be any of which grievances were made were mistakes of fact if at all, and did not amount to error apparent on the face of the record, the objections were not sustainable and award could not be set aside.”

8. In ***Jagdish Chander Bhatia V. Lachhman Das Bhatia JT 1993 (1) S.C. 232***, has been observed as under:-

“4. This Court pointed out in Food Corporation of India vs. Joginderpal Mohnderpal & Anr. [1989 (2) SCC 347] that an award of an Arbitrator can only be interfered with or set aside or modified within the four corners of the procedure provided by the statute. To put it differently, the Court does not sit in appeal and does not re-assess the evidence. Even if the Court feels that had it been left to it, it would have assessed the evidence differently that would not be a valid ground for setting aside the award.”

9. On the basis of the aforesaid decision, the appellate Court has come to the conclusion that the award is a reasoned award and it requires no interference and the trial Court has rightly dismissed the same. The appellate Court has reduced the interest part from 18 percent to 12 percent and partly allowed the same and dismissed the appeal so far as the claim no. 2 is concerned. However, so far as the claim no. 1 is concerned, the same has already been sent to the Court below for reconsideration and the same was interfered with by the appellate Court. .

10. In view of the aforesaid, since there was a limited jurisdiction of appeal arising out of the arbitration award, the jurisdiction under Article 226/227 of the Constitution of India cannot be interfered in view of the decision in ***Surya Dev Rai Vs. Ram Chander SCC 2003 Vol-6 675.***

11. In ***Surya Dev Rai Vs. Ram Chander SCC 2003 Vol-6 675***, the Apex Court has held as under:-

“Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirement are satisfied: (i) The error is manifest and

apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

“ A patent error is an error which is self- evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings is an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every moment, may become incapable of correction at a later stage and refused to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.”

The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing

inferences or correct errors of mere formal or technical character.”

12. Relying upon the Judgment of ***Surya Dev Rai Vs. Ram Chandra 2003 (6) SCC 675***, the Apex Court in ***Ranjeet Singh Vs. Ravi Prakash 2004 (3) SCC 682***, has held as under: -

*“ As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution of India also, it has been held in **Surya Dev Rai** that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal.”*

13. In view of the aforesaid, writ petition lacks merit and it dismissed. No order as to costs.

(Rajesh Tandon, J.)

14.08.2006

Rathour